

## HOUSE BILL NO. 772

INTRODUCED BY FACEY, GILLAN, HARRINGTON, JACOBSON, LARSON, WISEMAN

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE CATASTROPHICALLY INJURED WORKER'S TRAVEL ASSISTANCE ACT; ESTABLISHING A PROGRAM TO MATCH FUNDS RAISED BY NONPROFIT ORGANIZATIONS WITH UP TO \$2,500 FROM INSURERS TO ASSIST CATASTROPHICALLY INJURED WORKERS; PROVIDING THAT THE DEPARTMENT OF LABOR AND INDUSTRY SHALL ADMINISTER THE PROGRAM; PROVIDING RULEMAKING AUTHORITY; PROVIDING AN APPROPRIATION; AMENDING SECTION 39-71-704, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION.** **Section 1. Short title.** [Sections 1 through 4] may be cited as the "Catastrophically Injured Worker's Travel Assistance Act".

**NEW SECTION.** **Section 2. Purpose and intent.** The purpose of [sections 1 through 4] is to assist catastrophically injured workers and their families by providing that funds raised by community service organizations may be matched with funds from insurers to help the workers and their families defray the costs of travel and lodging expenses incurred by family members or, if a family member is unavailable, by a person designated by the injured worker or approved by the insurer when traveling to be with the worker.

**NEW SECTION.** **Section 3. Definitions.** As used in [sections 1 through 4], the following definitions apply:

(1) "Catastrophically injured" means a physical injury or occupational disease incurred by a worker to the extent that treatment for the injury or occupational disease:

(a) requires inpatient care for at least 21 consecutive days in a hospital or rehabilitation center that is in Montana but that is more than 100 miles from the worker's place of residence; or

(b) requires inpatient care for at least 21 consecutive days in a hospital or rehabilitation center that is located outside Montana; and

(c) occurs within 90 days of the accident or events causing the worker to be catastrophically injured.

(2) "Community service organization" means a community-based, nonprofit, tax-exempt organization under section 501(c)(3) of the Internal Revenue Code that raises money to assist the catastrophically injured worker.

(3) "Worker" has the meaning as provided in 39-71-118.

**NEW SECTION. Section 4. Catastrophically injured worker's travel assistance program -- rulemaking authority.** (1) Pursuant to subsection (3), the department of labor and industry shall establish criteria to certify that the funds raised by community service organizations are eligible for matching funds from an insurer.

(2) Money raised by ~~a community service organization~~ ORGANIZATIONS to pay travel expenses for a catastrophically injured worker pursuant to this section may not be used by ~~a community service organization~~ ORGANIZATIONS to require matching funds by an insurer in an amount greater than \$2,500 ~~during the injured worker's lifetime~~ FOR EACH CATASTROPHIC INJURY.

(3) The department shall adopt rules to administer 39-71-704 and this section.

**Section 5.** Section 39-71-704, MCA, is amended to read:

**"39-71-704. Payment of medical, hospital, and related services -- fee schedules and hospital rates -- fee limitation.** (1) In addition to the compensation provided under this chapter and as an additional benefit separate and apart from compensation benefits actually provided, the following must be furnished:

(a) After the happening of a compensable injury and subject to other provisions of this chapter, the insurer shall furnish reasonable primary medical services for conditions resulting from the injury for those periods as the nature of the injury or the process of recovery requires.

(b) The insurer shall furnish secondary medical services only upon a clear demonstration of cost-effectiveness of the services in returning the injured worker to actual employment.

(c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(d) (i) The insurer shall reimburse a worker for reasonable travel, lodging, meals, and miscellaneous expenses incurred in travel to a medical provider for treatment of an injury pursuant to rules adopted by the department. Reimbursement must be at the rates allowed for reimbursement for state employees.

(ii) Rules adopted under subsection (1)(d)(i) must provide for submission of claims, within 90 days from the date of travel, following notification to the claimant of reimbursement rules, must provide procedures for reimbursement receipts, and must require the use of the least costly form of travel unless the travel is not suitable for the worker's medical condition. The rules must exclude from reimbursement:

(A) 100 miles of automobile travel for each calendar month unless the travel is requested or required by the insurer pursuant to 39-71-605;

(B) travel to a medical provider within the community in which the worker resides;

(C) travel outside the community in which the worker resides if comparable medical treatment is available within the community in which the worker resides, unless the travel is requested by the insurer; and

(D) travel for unauthorized treatment or disallowed procedures.

(iii) An insurer is not liable for injuries or conditions that result from an accident that occurs during travel or treatment, except that the insurer retains liability for the compensable injuries and conditions for which the travel and treatment was required.

(e) Pursuant to rules adopted by the department, an insurer shall reimburse a catastrophically injured worker's family or, if a family member is unavailable, a person designated by the injured worker or approved by the insurer for travel assistance expenditures in an amount not to exceed \$2,500 to be used as a match to those funds raised by a community service organization ORGANIZATIONS to help defray the costs of travel and lodging expenses incurred by the family member or designated person when traveling to be with the injured worker. These funds must be paid in addition to any travel expenses paid by an insurer for a travel companion when it is medically necessary for a travel companion to accompany the catastrophically injured worker.

~~(e)(f)~~ Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury, the benefits provided for in this section terminate when they are not used for a period of 60 consecutive months.

~~(f)(g)~~ Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker has achieved medical stability, palliative or maintenance care except:

(i) when provided to a worker who has been determined to be permanently totally disabled and for whom it is medically necessary to monitor administration of prescription medication to maintain the worker in a medically stationary condition;

(ii) when necessary to monitor the status of a prosthetic device; or

(iii) when the worker's treating physician believes that the care that would otherwise not be compensable under subsection ~~(4)(f)~~ (1)(g) is appropriate to enable the worker to continue current employment or that there

1 is a clear probability of returning the worker to employment. A dispute regarding the compensability of palliative  
2 or maintenance care is considered a dispute over which, after mediation pursuant to department rule, the  
3 workers' compensation court has jurisdiction.

4 ~~(g)~~(h) Notwithstanding any other provisions of this chapter, the department, by rule and upon the advice  
5 of the professional licensing boards of practitioners affected by the rule, may exclude from compensability any  
6 medical treatment that the department finds to be unscientific, unproved, outmoded, or experimental.

7 (2) The department shall annually establish a schedule of fees for medical services not provided at a  
8 hospital that are necessary for the treatment of injured workers. Charges submitted by providers must be the  
9 usual and customary charges for nonworkers' compensation patients. The department may require insurers to  
10 submit information to be used in establishing the schedule.

11 (3) (a) The department shall establish rates for hospital services necessary for the treatment of injured  
12 workers.

13 (b) Except as provided in subsection (3)(g), rates for services provided at a hospital must be the greater  
14 of:

15 (i) 69% of the hospital's January 1, 1997, usual and customary charges; or

16 (ii) the discount factor established by the department that was in effect on June 30, 1997, for the hospital.  
17 The discount factor for a hospital formed by the merger of two or more existing hospitals is computed by using  
18 the weighted average of the discount factors in effect at the time of the merger.

19 (c) Except as provided in subsection (3)(g), the department shall adjust hospital discount factors so that  
20 the rate of payment does not exceed the annual percentage increase in the state's average weekly wage, as  
21 defined in 39-71-116.

22 (d) The department may establish a fee schedule for hospital outpatient services rendered. The fee  
23 schedule must, in the aggregate, provide for fees that are equal to the statewide average discount factors paid  
24 to hospitals to provide the same or equivalent procedure to workers' compensation hospital outpatients.

25 (e) The discount factors established by the department pursuant to this subsection (3) may not be less  
26 than medicaid reimbursement rates.

27 (f) For services available in Montana, insurers are not required to pay facilities located outside Montana  
28 rates that are greater than those allowed for services delivered in Montana.

29 (g) For a hospital licensed as a medical assistance facility or a critical access hospital pursuant to Title  
30 50, chapter 5, the rate for services is the hospital's usual and customary charge. Fees paid to a hospital licensed

as a medical assistance facility are not subject to the limitation provided in subsection (4).

(4) The percentage increase in medical costs payable under this chapter may not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.

(5) Payment pursuant to reimbursement agreements between managed care organizations or preferred provider organizations and insurers is not bound by the provisions of this section.

(6) Disputes between an insurer and a medical service provider regarding the amount of a fee for medical services must be resolved by a hearing before the department upon written application of a party to the dispute.

(7) (a) After the initial visit, the worker is responsible for \$25 of the cost of each subsequent visit to a hospital emergency department for treatment relating to a compensable injury or occupational disease.

(b) "Visit", as used in this subsection (7), means each time that the worker obtains services relating to a compensable injury or occupational disease from:

(i) a treating physician;

(ii) a physical therapist;

(iii) a psychologist; or

(iv) hospital outpatient services available in a nonhospital setting.

(c) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (7)(a) if the visit is for treatment requested by an insurer."

**NEW SECTION. Section 6. Appropriation.** There is appropriated \$1,000 from the worker's compensation administration fund to the department of labor and industry for the biennium ending June 30, 2007, to produce information to notify appropriate agencies and groups of the financial assistance available to catastrophically injured workers under the Catastrophically Injured Worker's Travel Assistance Act.

**NEW SECTION. Section 7. Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 39, and the provisions of Title 39 apply to [sections 1 through 4].

**NEW SECTION. Section 8. Effective date -- applicability.** [This act] is effective July 1, 2005, and applies to catastrophic injuries or occupational diseases occurring on or after July 1, 2005.

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